

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DOUGLAS WAYNE PERRY,

Plaintiff(s),

v.

NO. CIV. S-04-0107 FCD/PAN

**STATUS (PRETRIAL
SCHEDULING)ORDER**

DEREK TAACA, et al.,

Defendant(s).

After reviewing the parties' Status Reports, the court VACATES the Status Conference set for October 7, 2005 and makes the following orders:

I. ORDER TO SHOW CAUSE

After review of Defendants' counsel, Mr. Jay F. Stocker's, response to the Order to Show Cause ("OSC") issued on September 15, 2005 the OSC as to defendants' is hereby DISCHARGED. As to plaintiff's counsel, Mr. Derk W. Schutmaat, although Mr. Schutmaat did not submit a direct response to the OSC in light of the status report filed and the dismissal of defendant Ben Stout the court here DISCHARGES the OSC as to plaintiff but cautions counsel that any further failures to timely respond to any court orders will result in sanctions.

II. SERVICE OF PROCESS

All named defendants have been served and no further service is permitted without leave of court, good cause having been shown. Defendant Ben Stout is hereby dismissed pursuant to

1 the voluntary dismissal filed on September 30, 2005.

2 **III. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS**

3 No further joinder of parties or amendments to pleadings is permitted without leave of
4 court, good cause having been shown. See Fed. R. Civ. P. 16(b); Johnson v. Mammoth
5 Recreations, Inc., 975 F.2d 604 (9th Cir. 1992).

6 **IV. JURISDICTION/VENUE**

7 Jurisdiction is predicated upon 28 U.S.C. section 1338(a) and Venue on 28 U.S.C. section
8 1400(a). Jurisdiction and venue are not contested.

9 **V. DISCOVERY**

10 All discovery shall be completed by **March 31, 2006**. In this context, “completed”
11 means that all discovery shall have been conducted so that all depositions have been taken and
12 any disputes relative to discovery shall have been resolved by appropriate order if necessary and,
13 where discovery has been ordered, the order has been obeyed. All motions to compel discovery
14 must be noticed on the magistrate judge’s calendar in accordance with the local rules of this
15 court.

16 **VI. EXPERT WITNESSES and EXPERT DISCOVERY**

17 All counsel are to designate in writing, file with the court, and serve upon all other parties
18 the name, address, and area of expertise of each expert that they propose to tender at trial not
19 later than **April 14, 2006**. The designation shall be accompanied by a written report prepared
20 and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B). By
21 **May 4, 2006**. Any party who previously disclosed expert witnesses may submit a supplemental
22 list of expert witnesses who will express an opinion on a subject covered by an expert designated
23 by an adverse party, if the party supplementing an expert witness designation has not previously
24 retained an expert to testify on that subject. The supplemental designation shall be accompanied
25 by a written report which shall also comply with the conditions as stated above.

26 Failure of a party to comply with the disclosure schedule as set forth above in all
27 likelihood will preclude that party from calling the expert witness at the time of trial. An expert
28 witness not appearing on the designation will not be permitted to testify unless the party offering

1 the witness demonstrates: (a) that the necessity for the witness could not have been reasonably
2 anticipated at the time the list was proffered; (b) that the court and opposing counsel were
3 promptly notified upon discovery of the witness; and (c) that the witness was promptly made
4 available for deposition.

5 For purposes of this scheduling order, an “expert” is any person who may be used at trial
6 to present evidence under Rules 702, 703, and 705 of the Federal Rules of Evidence, which
7 include both “percipient experts” (persons who, because of their expertise, have rendered expert
8 opinions in the normal course of their work duties or observations pertinent to the issues in the
9 case) and “retained experts” (persons specifically designated by a party to be a testifying expert
10 for the purposes of litigation). Each party shall identify whether a disclosed expert is percipient,
11 retained, or both. It will be assumed that a party designating a retained expert has acquired the
12 express permission of the witness to be so listed. Parties designating percipient experts must
13 state in the designation who is responsible for arranging the deposition of such persons.

14 All experts designated are to be fully prepared at the time of **designation** to render an
15 informed opinion, and give their basis for their opinion, so that they will be able to give full and
16 complete testimony at any deposition taken by the opposing party. Experts will not be permitted
17 to testify at the trial as to any information gathered or evaluated, or opinion formed, after
18 deposition taken subsequent to designation. All expert discovery shall be completed by
19 **June 5, 2006.**

20 **VII. MOTION HEARING SCHEDULE**

21 All dispositive motions, except motions for continuances, temporary restraining orders or
22 other emergency applications, shall be heard no later than **August 18, 2006**. The parties may
23 obtain available hearing dates by calling Maureen Price, Deputy Courtroom Clerk at (916) 930-
24 4163.

25 All purely legal issues are to be resolved by timely pretrial motions. Local Rule 78-230
26 governs the calendaring and procedures of civil motions with the following additions:

- 27 (A) The opposition and reply must be filed **by 4:00 p.m.** on the day due; and
28 (B) When the last day for filing an opposition brief falls on a legal holiday, the

1 opposition brief shall be filed on the last court day **immediately**
2 **preceding** the legal holiday.

3 Failure to comply with Local Rule 78-230(c), as modified by this order, may be deemed consent
4 to the motion and the court may dispose of the motion summarily. Brydges v. Lewis, 18 F.3d
5 651, 652-53 (9th Cir. 1994). Further, failure to timely oppose a summary judgment motion¹ may
6 result in the granting of that motion if the movant shifts the burden to the nonmovant to
7 demonstrate that a genuine issue of material fact remains for trial. Marshall v. Gates, 44 F.3d
8 722 (9th Cir. 1995).

9 The court places a page limit of twenty (20) pages on all initial moving papers, twenty
10 (20) pages on oppositions, and ten (10) pages for replies. All requests for page limit increases
11 must be made through the courtroom deputy clerk at least fourteen (14) days prior to the filing of
12 the motion.

13 For the court's convenience, citations to Supreme Court cases should include parallel
14 citations to the Supreme Court Reporter.

15 The parties are reminded that a motion in limine is a pretrial procedural device designed
16 to address the admissibility of evidence. The court will look with disfavor upon dispositional
17 motions (except those noted on page 3) presented at the Final Pretrial Conference or at trial in the
18 guise of motions in limine.

19 **The parties are cautioned that failure to raise a dispositive legal issue that could**
20 **have been tendered to the court by proper pretrial motion prior to the dispositive motion**
21 **cut-off date may constitute waiver of such issue.**

22 **VIII. FINAL PRETRIAL CONFERENCE**

23 The Final Pretrial Conference is set for **October 20, 2006 at 1:30 p.m.** At least one of
24 the attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial
25 Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable to
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27 ¹The court urges any party that contemplates bringing a
28 motion for summary judgment or who must oppose a motion for
summary judgment to review Local Rule 56-260.

1 attend, the attorney who attends in place of the trial attorney shall have equal familiarity with the
2 case and equal authorization to make commitments on behalf of the client.

3 Counsel for all parties, are to be fully prepared for trial at the time of the Final Pretrial
4 Conference, with no matters remaining to be accomplished except production of witnesses for
5 oral testimony. The parties shall file, not later than seven (7) calendar days prior to the Final
6 Pretrial Conference, a **joint** pretrial statement. The provisions of Local rules 16-281 shall apply
7 with respect to the matters to be included in the joint pretrial statement. In addition to those
8 subjects listed in Local Rule 16-281(b), the parties are to provide the court with a plain, concise
9 statement that identifies every non-discovery motion tendered to the court and its resolution.

10 Failure to comply with Local Rule 16-281, as modified by this order, may be grounds for
11 sanctions.

12 **Concurrently with the filing of the Final Pretrial Conference Statement, counsel**
13 **shall submit to chambers a word processing version of the statement, its entirety, (including**
14 **the witness and exhibit lists) to: fdorders@caed.uscourts.gov.**

15 The parties should identify first the core undisputed facts relevant to all claims. The
16 parties should then, in a concise manner, identify those undisputed core facts that are relevant to
17 each claim.

18 The core disputed facts should be identified in the same manner. Where the parties are
19 unable to agree as to what core disputed facts are properly before the court for trial, they should
20 nevertheless list all core disputed facts asserted by each party.

21 Each disputed fact or undisputed fact should be separately numbered or lettered.

22 Each party shall identify and concisely list each disputed evidentiary issue which will be
23 the subject of a motion in limine.

24 Each party shall identify the points of law which concisely describe the legal issues of the
25 trial which will be discussed in the parties' respective trial briefs. Points of law should reflect
26 issues derived from the core undisputed and disputed facts. Parties shall not include argument of
27 authorities with any point of law.

28 The parties shall prepare a **joint** statement of the case in plain concise language which

1 will be read to the jury at the beginning of the trial. The purpose of the joint statement is to
2 inform the jury what the case is about.

3 The parties are reminded that pursuant to Local Rule 16-281 they are required to list in
4 the Final Pretrial Conference Statement **all** witnesses and exhibits they propose to offer at trial.
5 After the name of each witness, each party shall provide a **brief** statement of the nature of the
6 testimony to be proffered. The parties may file a joint list or each party may file separate lists.
7 These list(s) shall not be contained in the body of the Final Pretrial Conference Statement itself,
8 but shall be attached as separate documents to be used as addenda to the Final Pretrial Order.

9 Plaintiff's exhibits shall be listed numerically. Defendant's exhibits shall be listed
10 alphabetically. The parties shall use the standard exhibit stickers provided by the court: pink or
11 yellow for the plaintiff and blue for the defendant. In the event that the alphabet is exhausted, the
12 exhibits shall be marked "AA-ZZ" and "AAA-ZZZ" etc. All multi-page exhibits shall be listed
13 stapled or otherwise fastened together and each page within the exhibit shall be numbered. The
14 list of exhibits shall not include excerpts of depositions, which may be used to impeach
15 witnesses. **In the event that plaintiff(s) and defendant(s) offer the same exhibit during trial,**
16 **that exhibit shall be referred to by the designation the exhibit is first identified. The court**
17 **cautions the parties to pay attention to this detail so that all concerned, including the jury,**
18 **will not be confused by one exhibit being identified with both number and a letter.**

19 The Final Pretrial Order will contain a stringent standard for the offering at trial of
20 witnesses and exhibits not listed in the Final Pretrial Order, and the parties are cautioned that the
21 standard will be strictly applied. On the other hand, the listing of exhibits or witnesses that a
22 party does not intend to offer will be viewed as an abuse of the court's processes.

23 Counsel shall produce all trial exhibits to Maureen Price, the Courtroom Clerk, **no later**
24 **than 3:00 p.m. on the Friday before the trial.**

25 The parties also are reminded that pursuant to Rule 16 of the Federal rules of Civil
26 Procedure it will be their duty at the Final Pretrial Conference to aid the court in: (a) the
27 formulation and simplification of issues and the elimination of frivolous claims or defenses; (b)
28 the settling of facts that should properly be admitted; and (c) the avoidance of unnecessary proof

1 and cumulative evidence. Counsel must cooperatively prepare the joint Final Pretrial Conference
2 Statement and participate in good faith at the Final Pretrial Conference with these aims in mind.²
3 A failure to do so may result in the imposition of sanctions which may include monetary
4 sanctions, orders precluding proof, elimination of claims or defenses, or such other sanctions as
5 the court deems appropriate.

6 **IX. TRIAL SETTING**

7 The trial is set for **December 5, 2006 at 9:00 a.m.** Trial will be **to a jury.** The parties
8 estimate a trial length of approximately four-five (4-5) days.

9 **X. SETTLEMENT CONFERENCE**

10 No settlement conference is currently scheduled. A settlement conference may be set at
11 the time of the Final Pretrial Conference or at an earlier time at the parties' request. In the event
12 that an earlier settlement conference date is requested, the parties shall file said request jointly, in
13 writing. If the case will be tried to a jury, all parties should be prepared to advise the court
14 whether they will stipulate to the trial judge acting as settlement judge and waive disqualification
15 by virtue thereof.

16 Counsel are instructed to have a principal with full settlement authority present at the
17 Settlement Conference or to be fully authorized to settle the matter on any terms. At least seven
18 (7) calendar days before the Settlement Conference, counsel for each party shall submit to the
19 chambers of the settlement judge a confidential Settlement Conference Statement. Such
20 statements are neither to be filed with the Clerk nor served on opposing counsel. Each party,
21 however, shall serve notice on all other parties that the statement has been submitted. If the
22 settlement judge is not the trial judge, the Settlement Conference Statement shall not be disclosed
23 to the trial judge.

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26 ²If the pretrial conference discloses that no material facts
27 are in dispute and that the undisputed facts entitle one of the
28 parties to judgment as a matter of law, the court may summarily
dispose of the case or claims. Portsmouth Square v. Shareholders
Protective Comm., 770 F.2d 866, 868-69 (9th Cir. 1985).

